

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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GABRIEL SANTACRUZ,

Case No. 2:20-cv-00847-RFB-BNW

Petitioner,

ORDER

v.

JERRY HOWELL, et. al,

Respondents.

On June 26, 2020, this Court granted Petitioner Santacruz's motion for appointment of counsel and appointed the Federal Public Defender (FPD) to represent him in this proceeding under 28 U.S.C. § 2254. ECF No. 11. On June 30, 2020, the FPD filed a notice of appearance (ECF No. 12), a motion for leave to file a first amended petition (ECF No. 13), and a motion requesting scheduling order (ECF No. 16). Given that the respondents have yet to file a response to the initial petition and have not opposed Petitioner's request for time to file an amended petition, the Court will grant Petitioner's motions and schedule further proceedings. *See* Fed. R. Civ. P. 15(a).

IT IS THEREFORE ORDERED that Petitioner's motion for leave to file a first amended petition (ECF No. 13) and motion requesting scheduling order (ECF No. 16) are GRANTED. The Clerk is directed to **file** the first amended petition for writ of habeas corpus and attached exhibits (ECF Nos. 13-1 through 13-13). Petitioner's motion for leave to file exhibit under seal (ECF No 15) is also GRANTED.

1 **IT IS FURTHER ORDERED** that the following schedule will govern the proceedings
2 herein:

3 **Second Amended Petition.** If Petitioner wishes to file a seconded amended petition in this
4 action, he must do so within **ninety (90) days** of the date this order is entered. The amended
5 petition must state whether each ground for relief has been exhausted in state court. For each claim
6 that has been exhausted, the amended petition must state how, when, and where that occurred.

7 **Response to Petition.** Respondents will have **sixty (60) days** from receipt of the amended
8 petition (or from the expiry of the period for filing an amended petition if none is filed) to file and
9 serve an answer or other response to the amended petition.

10 **Reply.** Petitioner will have **forty-five (45) days** following service of an answer to file and
11 serve a reply. Respondents will then have **thirty (30) days** from receipt of the reply to file and
12 serve a response to the reply.

13 **Briefing of Motion to Dismiss.** If respondents file a motion to dismiss, Petitioner will have
14 **sixty (60) days** following service of the motion to file and serve a response to the motion.
15 Respondents will then have **thirty (30) days** following service of the response to file and serve a
16 reply.

17 **Discovery.** If Petitioner wishes to move for leave to conduct discovery, he must file and
18 serve that motion concurrently with, but separately from, the response to respondents' motion to
19 dismiss or the reply to respondents' answer. Any motion for leave to conduct discovery filed by
20 Petitioner before that time may be considered premature, and it may be denied without prejudice
21 on that basis. Respondents' response to any motion for leave to conduct discovery must be filed
22 concurrently with, but separately from, their reply in support of their motion to dismiss or their
23 response to Petitioner's reply. Petitioner will then have **twenty (20) days** to file and serve a reply
24 in support of his discovery motion.

25 **Evidentiary Hearing.** If Petitioner wishes to request an evidentiary hearing, he must file
26 and serve a motion for an evidentiary hearing concurrently with, but separately from, the response
27 to Respondents' motion to dismiss or the reply to Respondents' answer. Any motion for an
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1 evidentiary hearing filed by Petitioner before that time may be considered premature, and it may
2 be denied without prejudice on that basis. The motion for an evidentiary hearing must specifically
3 address why an evidentiary hearing is required and must meet the requirements of 28 U.S.C. §
4 2254(e). The motion must state whether an evidentiary hearing was held in state court, and, if so,
5 identify where the transcript is located in the record. If Petitioner files a motion for an evidentiary
6 hearing, Respondents' response to that motion must be filed concurrently with, but separately
7 from, their reply in support of their motion to dismiss or their response to Petitioner's reply.
8 Petitioner will then have **twenty (20) days** to file and serve a reply in support of the motion for an
9 evidentiary hearing.

10 Dated: July 29, 2020.

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12 UNITED STATES DISTRICT JUDGE
13 HON. RICHARD F. BOULWARE, II
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